IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

OHIO STATE UNIVERSITY,	:	APPEAL NO. C-090013 TRIAL NO. 08CV-25905
Plaintiff-Appellee,	:	*JUDGMENT ENTRY.*
vs.	:	
AYMAN S. AMARA,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Plaintiff-appellee, Ohio State University, filed a complaint to collect outstanding student loan debt from defendant-appellant, Ayman S. Amara. Amara filed an answer pro se denying that he owed the debts. Ohio State filed a request for admissions. When Amara failed to respond, it filed motions to have the request for admissions deemed admitted and for summary judgment. The trial court granted both motions and entered judgment in favor Ohio State for $10,070.20, plus interest and costs. Amara has filed a pro se appeal from that judgment.

Amara presents eight assignments of error for review. His second, fifth, sixth, seventh, and eighth assignments of error all involve matters outside the record on appeal. In support of these assignments of error, he has attached documents to his brief that were never presented to the trial court and are not part of the record on appeal. A reviewing court cannot add matter to the record before it that was not part of the trial court's proceedings and then decide the appeal on the basis of that new

[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

matter.[2] Because Amara has failed to meet his burden to show error by reference to matters in the record, we cannot reverse the trial court's judgment on the basis of these assignments of error.[3] We, therefore, overrule them.

In his remaining assignments of error, Amara argues that he was not properly served under Civ.R. 4, and other related civil rules. These rules relate to the filing of the initial complaint and how the court initially obtains personal jurisdiction over the defendant.[4] Courts generally begin with the presumption that service was proper unless the defendant rebuts this presumption with sufficient evidence that it was not.[5] Further, a party may waive his or her right to service of process.[6] A party may also waive objections to lack of personal jurisdiction by failing to assert a defense of insufficient service.[7]

In this case, the record shows that Amara received the complaint and filed a written waiver of service. He also filed an answer and did not raise the defense of insufficient service of process. Subsequent documents were served on him at the address he gave in his answer, as Civ.R. 5 required. Thus, the record shows that Amara failed to meet his burden to prove ineffective service, and the trial court properly obtained personal jurisdiction over him.[8]

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[2] *In re Contested Election of November 2, 1993*, 72 Ohio St.3d 411, 413, 1995-Ohio-16, 650 N.E.2d 859; *Lassiter v. Lassiter*, 1st Dist. Nos. C-020494, C-020730, and C-020128, 2003-Ohio-2333, ¶2.

[3] See *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199, 400 N.E.2d 384; *In re Bailey*, 1st Dist. Nos. C-040014 and C-040479, 2005-Ohio-3039, ¶19; *Firstar Bank, N.A. v. First Serv. Title Agency, Inc.*, 1st Dist. No. C-030641, 2004-Ohio-4509, ¶6-7.

[4] *In re Thomas*, 7th Dist. Nos. 06 MO 7 and 06 MO 8, 2008-Ohio-2409, ¶25.

[5] Id.; *In re Crabtree*, 1st Dist. No. C-010290, 2002-Ohio-1135.

[6] Civ.R. 4(D); *Pearl v. Porrata*, 3rd Dist. No. 10-107-24, 2008-Ohio-6353, ¶20-21; *Thomas*, supra, at ¶25.

[7] Civ.R. 12(H); *Thomas*, supra, at ¶25; *Estate of Hodary v. Chancey* (Dec. 17, 1999), 1st Dist. No. C-980896.

[8] See *Thomas*, supra, at ¶25; *Money Tree Loan Co. v. Williams*, 169 Ohio App.3d 336, 2006-Ohio-5568, 862 N.E.2d 855, ¶8.

Amara next argues that the trial court erred in deeming the matters raised in Ohio State's request for admissions to be admitted and in granting its motion for summary judgment on that basis. Civ.R. 36 provides that when a party files requests for admissions, the opposing party must respond within 28 days by either objection or answer. Failure to respond to the requests will result in the requests becoming admissions.[9] Moreover, requests for admissions are "self-executing." If a party does not respond to a request for admissions, the matter is automatically admitted without further action by the requesting party.[10]

The record shows that on October 29, 2008, Ohio State served both a written and an electronic copy of its requests for admissions on Amara. Amara failed to respond in any way. Consequently, on December 4, 2008, Ohio Stated filed a motion to have its requests for admissions deemed admitted and a motion for summary judgment. The following day, it received a message from Amara stating that the computer disk it had sent to him was broken. Amara filed a "Motion for Dismissal" of Ohio's State's motions. Finally, on December 29, 2008, the trial court journalized an entry granting Ohio State's motions. Thus, the record shows that Amara failed to respond to the request for admissions within the 28 days Civ.R. 36 required.

Because Amara failed to respond within the appropriate time, the matters in Ohio's State's request for admissions were automatically admitted. Consequently, the trial court did not err in granting Ohio State's motion to have them deemed admitted.

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[9] *Cleveland Trust Co. v. Willis* (1985), 20 Ohio St.3d 66, 67, 485 N.E.2d 1052; *State ex rel. Homan v. Cincinnati*, 1st Dist. No. C-080099, 2008-Ohio-5501, ¶13; *JPMorgan Chase & Co. v. Industrial Power Generation, Ltd.,* 11th Dist No. 2007-T-0026, 2007-Ohio-6008, ¶26-27.
[10] *Palmer-Donavin v. Hanna*, 10th Dist. No. 06AP-699, 2007-Ohio-2242, ¶10; *Villardo v. Sheets*, 12th Dist. No. CA2005-09-091, 2006-Ohio-3473, ¶21-22.

Amara's primary argument is that Ohio State did not properly serve the request for admissions because the disk that was sent to him was "broken." Actually, the record shows not that the disk was necessarily broken, but that Amara could not open the documents on the disk.

Former Civ.R. 36(A), as it read at the time of the request for admissions, required the party serving the request for admissions to serve both a printed and an electronic copy of the request. Ohio State complied with this requirement. Amara's argument completely ignores that Ohio State sent him a written copy of the request for admissions.

Further, if the disk that Amara had received was broken, he needed to object within the 28-day period provided for a response to the request for admissions, as required by Civ.R. 6(B).[11] Instead, he did nothing. He did not even notify Ohio State about the problem with the disk until after it had filed its motion to have the requests for admissions deemed admitted. We note that Civ.R. 36(B) was amended, effective July 1, 2009, to specifically state that "[f]ailure to provide an electronic copy does not alter the designated period for response, but shall constitute good cause for the court to order the period enlarged if request therefor is made pursuant to Civ.R. 6(B) before the expiration of the designated period." Thus, the broken disk did not excuse Amara's inaction for over 28 days.

Amara's status as pro se litigant does not change this result. Pro se litigants are bound by the same rules and procedures as litigants represented by counsel.

[11] See *Cleveland Trust*, supra, at 67; *Grano v. Mentor*, 11th Dist. No. 2005-L-185, 2006-Ohio-6104, ¶17-32; *Angel Staffing Solutions v. Somerset Care Ctr.*, 5th Dist. No. 05CA43, 2006-Ohio-3297, ¶12-16.

Courts need not accord them greater rights, and they must accept the results of their own mistakes and errors.[12]

Additionally, the trial court, in its discretion, may permit the withdrawal or amendment of the admissions.[13] Construing Amara's "motion for dismissal" as a motion for withdrawal or amendment, we cannot hold that the trial court's failure to grant that motion was so arbitrary, unreasonable, or unconscionable as to connote and abuse of discretion.[14]

Finally, any matter admitted under Civ.R. 36 is conclusively established. A request for admission can establish a fact, even if it goes to the heart of the case, and can support a court's decision to grant summary judgment.[15] In this case, the request for admissions asked Amara to admit (1) that he had received the student loans; (2) that he had not repaid the student loans; (3) that he had accepted the terms of the loans documents; (4) that he was indebted to Ohio State for the loans; and (5) that he owed Ohio State $10,070.20, plus interest and costs.

Once these admissions became established facts, no material issues of fact existed for trial. Ohio State was entitled to judgment as a matter of law, and the trial court did not err in granting its motion for summary judgment.[16] Consequently, we overrule Amara's first, third, and fourth assignments of error and affirm the trial court's judgment.

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[12] *Arkwright Mut. Ins. Co. v. Toler*, 1st Dist. No. C-020589, 2003-Ohio-2202, ¶15.
[13] *Cleveland Trust*, supra, at 67; *JPMorgan Chase*, supra, at ¶26; *Szigeti v. Loss Realty Group,* 6th Dist. No. L-03-1160, 2004-Ohio-1339, ¶15-18.
[14] See *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 218, 450 N.E.2d 1140; *Szigeti*, supra, at ¶19.
[15] *Cleveland Trust*, supra, at 67; *JPMorgan Chase*, supra, at ¶27; *Auto Owners Ins. v. Foxfire Golf Club, Inc.*, 4th Dist. No. 05CA37, 2007-Ohio-1101, ¶9-10.
[16] See *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66, 375 N.E.2d 46; *Stinespring v. Natorp Garden Stores, Inc.* (1998), 127 Ohio App.3d 213, 215, 711 N.E.2d 1104.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., DINKELACKER and **MALLORY, JJ.**

To the Clerk:

Enter upon the Journal of the Court on November 4, 2009

per order of the Court _____.

Presiding Judge